LIM PAH SOON

v.

PP

COURT OF APPEAL, PUTRAJAYA
AZAHAR MOHAMED JCA
ABDUL AZIZ RAHIM JCA
MOHD ZAWAWI SALLEH JCA
[CRIMINAL APPEAL NO: B-05-5-01-2012]
21 JUNE 2013

CRIMINAL LAW: *Dangerous Drugs Act 1952, s. 39B(1)(a) - Trafficking in dangerous drugs - Conviction and sentence - Appeal against - Weight of drugs - Material discrepancy - Whether serious doubts arose as to identity of drugs exhibits - Whether defence ought to be called - Whether there was break in chain of evidence - Whether reasonable doubt arose in prosecution's case - Criminal Procedure Code, ss. 180(1) & 180(4)*

CRIMINAL PROCEDURE: *Appeal - Appeal against conviction and sentence - Trafficking in dangerous drugs - Weight of drugs - Material discrepancy - Whether serious doubts arose as to identity of drugs exhibits - Whether defence ought to be called - Whether there was break in chain of evidence - Whether reasonable doubt arose in prosecution's case - Criminal Procedure Code, ss. 180(1) & 180(4)*

EVIDENCE: *Exhibit - Identity of exhibits - Weight of drugs - Material discrepancy - Whether serious doubts arose as to identity of drugs exhibits - Whether defence ought to be called - Whether there was break in chain of evidence - Whether reasonable doubt arose in prosecution's case - Criminal Procedure Code, ss. 180(1) & 180(4)*

In the High Court, the appellant was sentenced to the mandatory death penalty for trafficking in dangerous drugs, namely 1,563 grams of ketamine and 52 grams of nimetazepam, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). Dissatisfied, the appellant appealed. The issue that arose for consideration was whether the learned trial judge erred when he failed to appreciate that there were serious doubts with regards to the identity of the drugs exhibits. According to SP2 and the investigating officer, the gross weight of the ketamine was 2,000 grams whereas, according to the chemist ('SP1'), the gross weight of the ketamine was 2,009.9 grams. Hence, it was argued, *inter*

A *alia*, that (i) there was an increase of 9.9 grams of the drugs exhibits in question; and (ii) the defence of the appellant ought not to have been called since there was no explanation given in relation to this material discrepancy.

B **Held (allowing appeal; quashing and setting aside conviction and sentence)**
Per Azahar Mohamed JCA delivering the judgment of the court:

C **(1)** In accordance with ss. 180(1) and 180(4) of the Criminal Procedure Code ('CPC'), it is the bounden duty of trial judges to undertake a positive or maximum evaluation of the credibility and reliability of all the evidence adduced so as to determine whether each and essential ingredients of the offence has been established, in order to make a finding D whether the prosecution has made out a *prima facie* case against the accused. (para 12)

(2) The prosecution must prove that the offending drugs exhibits that were actually seized were the very same exhibits that E were analysed by SP1 and confirmed to be dangerous drugs and it was for the trafficking of the same drugs that the appellant was charged with. This was a question of fact. For the purpose of ss. 180(1) and 180(4) of the CPC, the learned judge was under a legal obligation to arrive at, and make the F necessary finding on the factual issue on the basis of the evidence tendered and the submissions made by the parties before him. Thereafter, there was a statutory duty on the learned judge to make a specific finding of facts on the material discrepancy issue raised by the appellant. (para 13)

G **(3)** The dangerous drugs itself constituted the very *corpus delicti* of the offence and in sustaining a conviction under s. 39B(2) of the Act, the identity and integrity of the *corpus delicti* must be established beyond reasonable doubt. Where there is a H material discrepancy in the weight of the drug exhibit as found by the police and the chemist, it is incumbent on the prosecution to explain such discrepancy satisfactorily. The absence of a reasonable explanation would give rise to a reasonable doubt on the identity of the drugs exhibits. Further, I it was a contradiction in terms to say that there was no break in the chain of evidence when in fact there exists material discrepancy as to the weight of the drug exhibit. (para 16)

(4) The trial judge's failure to take into consideration the evidence regarding the material discrepancy amounted to a failure to consider a defence which had been put forward. It was the duty of the trial judge to consider the defence, no matter how weak it may be. In the present case, the learned trial judge misdirected himself in that he overlooked and failed to appreciate the importance of the issue as it could raise a reasonable doubt on the identity of the offending drugs and hence, could consequently raise a reasonable doubt on the prosecution's case. The appellant should have been discharged and acquitted by the learned judge without his defence being called. (paras 13 & 17)

Bahasa Malaysia *Translation Of Headnotes*

Di Mahkamah Tinggi, perayu telah dijatuhkan hukuman mati mandatori bagi kesalahan mengedar dadah berbahaya, iaitu, 1,563 gram ketamine dan 52 gram nimetazepam, satu kesalahan di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Tidak berpuas hati, perayu merayu. Isu yang dibangkitkan untuk pertimbangan adalah sama ada yang arif hakim perbicaraan khilaf apabila beliau gagal mempertimbangkan bahawa terdapat keraguan serius terhadap identiti ekshibit dadah. Menurut SP2 dan pegawai penyiasat, berat kasar ketamine adalah 2,000 gram manakala, menurut ahli kimia ('SP1'), berat kasar ketamine adalah 2,009.9 gram. Oleh itu, dihujahkan, antara lain, bahawa (i) terdapat kenaikan 9.9 gram dalam ekshibit dadah berkenaan; dan (ii) pembelaan perayu tidak sepatutnya dipanggil memandangkan tiada penjelasan diberikan terhadap percanggahan material ini.

Diputuskan (membenarkan rayuan; membatalkan dan mengenepikan sabitan dan hukuman)
Oleh Azahar Mohamed HMR menyampaikan penghakiman mahkamah:

(1) Menurut ss. 180(1) dan 180(4) Kanun Tatacara Jenayah ('KTJ'), adalah menjadi tanggungjawab hakim bicara untuk membuat penilaian positif atau maksimum terhadap kredibiliti dan kebolehpercayaan keterangan yang dikemukakan bagi menentukan sama ada setiap unsur penting kesalahan telah dibuktikan, untuk membuat penemuan sama ada pihak pendakwaan telah membuktikan kes *prima facie* terhadap tertuduh.

(2) Pihak pendakwaan sepatutnya membuktikan bahawa ekshibit dadah yang dirampas adalah ekshibit sama yang dianalisa oleh SP1 dan disahkan sebagai dadah berbahaya dan ia adalah untuk pengedaran dadah sepertimana perayu dituduh dengannya. Ini adalah satu persoalan fakta. Bagi kehendak ss. 180(1) dan 180(4) KTJ, yang arif hakim mempunyai kewajipan undang-undang untuk mencapai, dan membuat penemuan atas isu fakta tersebut berdasarkan keterangan yang dikemukakan dan hujahan pihak-pihak. Seterusnya, yang arif hakim mempunyai tanggungjawab statutori untuk membuat penemuan spesifik terhadap fakta bagi percanggahan material yang dibangkitkan oleh perayu.

(3) Dadah berbahaya tersebut dengan sendirinya membentuk *corpus delicti* kesalahan dan dalam mengekalkan sabitan di bawah s. 39B(2) Akta, identiti dan integriti *corpus delicti* itu mesti dibuktikan melampaui keraguan munasabah. Jika terdapat percanggahan material terhadap berat dadah seperti yang ditemui oleh pihak polis dan ahli kimia, pihak pendakwaan perlu memberi penjelasan mengenai percanggahan tersebut secara memuaskan. Kegagalan memberi penjelasan munasabah akan membangkitkan keraguan munasabah terhadap identiti ekshibit dadah. Selanjutnya, adalah merupakan suatu percanggahan terma untuk menyatakan bahawa tiada pemutusan dalam rantaian keterangan apabila wujud percanggahan material terhadap berat ekshibit dadah.

(4) Kegagalan hakim untuk mempertimbangkan mengenai percanggahan material menyebabkan kegagalan mempertimbangkan pembelaan yang dikemukakan. Adalah menjadi tanggungjawab hakim bicara untuk mempertimbangkan pembelaan, tanpa mengira betapa lemahnya pembelaan. Dalam kes ini, hakim bicara telah tersalah arah di mana beliau terlepas pandang dan gagal mempertimbangkan kepentingan isu ini memandangkan ia boleh membangkitkan keraguan munasabah terhadap identiti dadah berkenaan dan oleh itu, boleh membangkitkan keraguan munasabah terhadap kes pendakwaan. Perayu sepatutnya dilepaskan oleh hakim bicara tanpa dipanggil untuk membela diri.

Case(s) referred to:
Ahmad Najib Aris v. PP [2009] 2 CLJ 800 FC ***(refd)***
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Davendar Singh Sher Singh v. PP [2012] 1 LNS 261 CA ***(refd)***
Er Ah Kiat v. PP [1965] 1 LNS 37 FC ***(refd)***
Gooi Loo Seng v. PP [1993] 3 CLJ 1 SC ***(refd)***
Gunalan Ramachandran & Ors v. PP [2004] 4 CLJ 551 CA ***(refd)***
Loh Kah Loon v. PP [2011] 5 CLJ 345 FC ***(refd)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
Tan Yew Choy v. PP [2009] 4 CLJ 245 FC ***(refd)***
Yeong Kia Heng lwn. PP [1992] 1 CLJ 364; [1992] CLJ (Rep) 372 SC ***(refd)***
Zaifull Muhammad v. PP & Another Appeal [2013] 2 CLJ 383 FC ***(dist)***

Legislation referred to:
Courts of Judicature Act 1964, s. 60
Criminal Procedure Code, s. 180(1), (4)
Dangerous Drugs Act 1952, s. 39B(1)(a), (2)

Other source(s) referred to:
Archbold, *Criminal Pleading, Evidence and Practice,* 2011 edn, p 1075

For the appellant - Hisyam Teh Poh Teik (Salehuddin Saidin with him); M/s Teh Poh Teik & Co
For the respondent - Andi Razalijaya A Dadi; DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 45A-217-2010]

Reported by Kumitha Abd Majid

JUDGMENT

Azahar Mohamed JCA:

[1] Lim Pah Soon ("the appellant") was charged and tried in the High Court at Shah Alam for trafficking in dangerous drugs, namely 1,563g of ketamine and 52g of nimetazepam, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ("DDA"), and punishable under s. 39B(2) of the DDA. The offence was said to have been committed on 14 March 2010 at about 5.10pm at a parking lot at Jalan Bunga Tanjung 7, Taman Muda, Ampang, in the District of Hulu Langat, in the State of Selangor Darul Ehsan.

[2] The learned High Court Judge at the conclusion of the trial convicted the appellant and sentenced him to the mandatory death penalty prescribed by the DDA. The appellant then appealed to this court. We heard his appeal, wherein at its conclusion we unanimously allowed it. We now give the reasons of our decision.

[3] The facts of the case, which the learned judge held made out a *prima facie* against the appellant, have been fully set out in his judgment. Very briefly, the facts adduced by the prosecution giving rise to the charge against the appellant were as follows. Acting on information received, DSP Maimunah bt Abu Bakar (SP2) and a police raiding team carried out surveillance on a Proton Wira bearing registration No. WRK 8963 ("the car") at the targeted area in Taman Muda. While SP2 was keeping watch, she saw the car heading towards the shop houses and parked in front of a row of the shop houses. The appellant was seen driving the car. No one else was with him at that time. As soon as the appellant had parked the car, SP2 then instructed the driver of her car to block the car driven by the appellant from behind. Almost immediately, SP2 and the other members of the raiding team then rushed to the car. SP2 knocked on the driver's window and identified herself as police and told the appellant to come out from the car. At that point, according to SP2, the appellant attempted to push the door forcibly and tried to escape. The appellant was arrested after he had come out of the car.

[4] SP2 then inspected the car. SP2 found a plastic package on the front passenger seat. SP2 examined it. The plastic bag had the words 'Thank You' written on it. Inside the plastic bag was a box with the word 'Ribena'. Inside the Ribena box, SP2 found the following items: (i) two packages wrapped in Chinese newspapers, and (ii) ten transparent plastic packets containing aluminium foils. In each of the newspaper package were powdery substances suspected to be dangerous drugs. From the ten transparent plastic packets were 100 aluminium foils. Each foil had ten pills also suspected to be dangerous drugs. These two different types of drugs were the subject matter of the charge against the appellant.

[5] It is the case for the prosecution that the two packages and aluminium foils were later sent to the Chemistry Department for chemical examination and analysis. The contents of the two packages and the aluminium foils were later confirmed by the chemist, Suhana bt Ismail (SP1), to be 1,563g of ketamine and 52g of nimetazepam.

[6] At the conclusion of the case for the prosecution, the learned judge came to the finding that the prosecution had made out a *prima facie* case against the appellant and therefore called upon the appellant to enter his defence in respect of the offence charged.

[7] The appellant elected to give sworn evidence. According to him, although he is self-employed, he is also a football bookie. He testified that one Ah Meng had placed bets through him and was indebted to him in about RM80,000. It was his evidence that on the day in question, Ah Meng and his friend had taken a lift in his car after the appellant and Ah Meng had discussed about the debt at a coffee shop where Ah Meng had agreed to pay half his debt first. The appellant further stated that Ah Meng and his friend wanted a lift to the Taman Kencana bus stop which the appellant agreed. Ah Meng sat at the front passenger seat whilst his friend sat behind. The appellant further said that when Ah Meng entered the car, he had with him a red plastic bag. The appellant also said that he dropped off both Ah Meng and his friend at the bus stop. He was unsure whether Ah Meng had brought along the plastic bag as there was a bus behind him when they hurriedly got down from the car and he was not aware of the red plastic bag. The appellant said he never saw the red plastic bag or the Ribena box. The appellant also denied that he tried to escape.

[8] The appellant called Soo Yoke Hong (SD2) to corroborate his version. SD2 corroborated about Ah Meng's debt, the meeting at the coffee shop, that Ah Meng was to pay RM40,000 first and that both Ah Meng and his friend got into the appellant's car with Ah Meng sitting behind whilst his friend taking the front passenger seat beside the driver. SD2 also said that he saw Ah Meng had with him a red plastic bag when he got into the car.

[9] In the course of the arguments before us, what turned out to be one of the most important points raised by learned counsel for the appellant, En Hisyam Teh Poh Teik, was that the learned judge erred when he failed to appreciate that there were serious doubts with regard to the identity of the drugs exhibits (see para. 5 of the petition of appeal). Learned counsel argued that the evidence contained in the appeal record ("AR") revealed that there was unexplained serious discrepancy as to the identity of the

exhibits in question to the extent that the integrity of the drugs exhibits had been compromised. On the facts and the prevailing circumstances of this case, we find there is merit in this argument.

[10] Learned counsel had taken us through the evidence of SP2 and the investigating officer, Inspector Mohd Asraf bin Mohd Sikon (SP5) at pp. 19 and 60 vol. 1 of the AR. According to SP2 and SP6, the gross weight of the ketamine was 2,000g. However, according to the chemist evidence, through SP1, the gross weight of the ketamine was 2,009.9g (see p. 11 vol. 1 of the AR). As such, the basic fact that can be gleaned from the evidence is that there was a material discrepancy in that there was an increase of 9.9g of the drugs exhibits in question. This discrepancy goes to the identity of the drugs exhibits.

[11] To appreciate the argument raised by learned counsel, it is imperative at this juncture that we should highlight a crucial point. The existence of the material discrepancy of the gross weight of the offending drugs was made known to the prosecution during the trial through the testimonies of the relevant prosecution witnesses. Yet, during the trial before the learned judge, no explanation was given by the prosecution to account for this material discrepancy. No evidence was led by the prosecution to explain the discrepancy in weight of the drugs exhibits.

[12] Even more to the point, this material discrepancy issue was explicitly and distinctly raised by the then learned counsel for the appellant in his submissions at the conclusion of case for the prosecution before the learned judge (see pp. 119-122 vol. 2 of AR). It was argued that the defence of the appellant ought not to be called in respect of the charge for the reason that the non-explanation of the material discrepancy was fatal to the prosecution's case. The identity of the drugs exhibits was a live issue throughout the trial before the learned judge. Tellingly, however, the learned judge never addressed or commented on this issue in his judgment. Now, by virtue of s. 180(1) of the Criminal Procedure Code ("CPC"), when the case for the prosecution is concluded, the court must consider whether the prosecution has made out a *prima facie* case against the accused. Then, s. 180(4) provides that a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would

warrant a conviction. Here, we would like to remind all trial judges that in accordance with the provisions of s. 180(1) and (4) of the CPC, it is the bounden duty of trial judges to undertake a positive or maximum evaluation of the credibility and reliability of all the evidence adduced so as to determine whether each and essential ingredients of the offence has been established, in order to make a finding whether or not the prosecution has made out a *prima facie* case against the accused (see: *Balachandran v. PP* [2005] 1 CLJ 85, *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734; [2003] 2 MLJ 65 and *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457).

[13] It is well settled rule that the onus of proving everything essential to the establishment of a charge is upon the prosecution. Now, in the context of the present case, it is trite law that one of the essential ingredients of the offence which the prosecution must prove is that the offending drugs exhibits that were actually seized from the car were the very same exhibits that were analysed by SP1 and confirmed to be dangerous drugs and it was for the trafficking of the same drugs that the appellant was charged with (see: *Gunalan Ramachandran & Ors v. PP* [2004] 4 CLJ 551). This is a question of fact. Ultimately, for the purpose of s. 180(1) and (4) of the CPC, the learned judge was under a legal obligation to arrive at, and make the necessary finding on this factual issue on the basis of the evidence tendered and the submissions made by the parties before him. It follows from this that once the evidence had been place and submissions made, there was a statutory duty cast on the learned judge to make a specific finding of facts on the material discrepancy issue raised by the appellant. These are deep-seated expectations not only from the appellant but also from the prosecution before the learned judge. This is acutely important in a case that attracts the mandatory death penalty prescribed by the DDA as in the present case. For that reason, the duty of the learned judge as a trial judge is to ensure that this legal obligation is complied with so as to avoid 'failure of justice' situations. However, as we indicated earlier, the learned judge never addressed or commented on this issue in his judgment. This was never considered by the learned judge and he failed to direct his mind on this point. In our judgment, the failure on the part of the learned judge to take the evidence regarding the material discrepancy into consideration amounted in effect to a failure to consider a defence which had been put forward (see: *Er Ah Kiat v. PP* [1965] 1 LNS 37; [1965] 2 MLJ 238). It was the duty of

the learned trial judge to consider that defence, no matter how weak it may be (see: *Davendar Singh Sher Singh v. PP* [2012] 1 LNS 261; [2012] 3 AMR 489). In our view, this is a serious non-direction which amounts to a misdirection by the learned trial judge warranting appellate intervention (see: *Gooi Loo Seng v. PP* [1993] 3 CLJ 1; [1993] 2 AMR 1135). The learned judge misdirected himself in that he overlooked and failed to appreciate the importance of this issue as it could raise a reasonable doubt on the identity of the offending drugs and hence could consequently raise a reasonable doubt on the prosecution's case.

[14] Still, we also need to consider one further argument advanced by the learned Deputy Public Prosecutor ("DPP"), En Andi Razalijaya bin A Dadi, to the effect that if the learned judge had not considered the material discrepancy issue then we as the appellate court should do so. In this regard, the learned DPP fairly and frankly admitted that there was a discrepancy as to the gross weight of the offending exhibits and that no explanation was given by the prosecution to account for this material discrepancy. However, relying on the case of *Loh Kah Loon v. PP* [2011] 5 CLJ 345, it was the learned DPP's argument that even though there existed a discrepancy in the gross weight of the offending drugs exhibits as found by the police and SP1, there was no doubt in the identity of the drugs exhibits as the evidence before the court showed that there was no break in the chain of evidence in respect of the drugs exhibits.

[15] We find ourselves quite unable to agree with the learned DPP's submissions. First and foremost, we are mindful of the principle of law that where there has been a misdirection or non-direction, the conviction will be rendered unsafe unless the Court of Appeal are satisfied that, on the whole of the facts and with a correct direction, the reasonable and proper verdict would have been one of guilty (see: *Archbold, Criminal Pleading, Evidence and Practice* 2011 edn, p. 1075 and *Ahmad Najib Aris v. PP* [2009] 2 CLJ 800; [2009] 2 MLJ 613 and the proviso to s. 60 of the Courts of Judicature Act 1964). In considering this matter, the authority that we would like to refer is the recent Federal Court decision in the case of *Zaifull Muhammad v. PP & Another Appeal* [2013] 2 CLJ 383 which was brought to our attention by learned counsel for the appellant. In that case, the gross weight of the cannabis stated by the police was 880g. However, the chemist

stated that the gross weight was 829.49g. Furthermore, there were discrepancies as to the number of "ketulan" of the cannabis seized. There was no explanation given by the prosecution with regard to the above discrepancies. The Federal Court held that it was fatal and acquitted both the appellants. Another point that must be mentioned here is that in *Zaifull Muhammad v. PP*, the prosecution's case against both the appellants was strong as its case was based on the evidence of an agent provocateur. His Lordship Arifin Zakaria CJ in delivering the judgment of the court said:

> [33] In the present case, there are two material discrepancies that is as to the number of "ketulan" and as to the gross weight of the cannabis. Both these discrepancies were never explained by the prosecution, save to say that the charged referred to by the learned counsel was the original charge, and the charge was later amended to read as trafficking in 799.4g of cannabis. It was further contended by the prosecution that since the amended charge is based on the net weight, therefore, any discrepancy in the gross weight is immaterial.
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> [34] The prosecution further argued that based on the evidence before the court, there is no break in the chain of the evidence with regard to the drug exhibit. The prosecution submitted that all the relevant witnesses called by the prosecution had positively identified the drug exhibit based on the contemporaneous markings made by the witnesses. On that premise, the prosecution contended that the discrepancies do not create any doubt in the identity of the drug exhibit.
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> [35] With respect, we could not agree with the prosecution on this issue. We are of the view that, in the circumstance of this case, it is incumbent on the prosecution to offer some explanation for the discrepancies. With the discrepancies left unexplained, this created a reasonable doubt as to the identity of the drug exhibit. In the circumstance, the defence should not have been called at the close of the prosecution case.
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> [36] In *Yeong Kia Heng lwn. PP* [1992] 1 CLJ 364; [1992] 1 CLJ (Rep) 372, like in the present case, there was a discrepancy in the weight of the drug exhibit between the police and the chemist. The former Supreme Court held that the difference in weight had cast a reasonable doubt on the identity of the drug exhibit. On that premise, the Supreme Court held that the appellant ought not to have been called to enter his defence. Similarly in *Tan Yew Choy*

v. PP [2009] 4 CLJ 245, the Federal Court again found that because of the discrepancy in weight of drug exhibit as found by the police as against the chemist, the Federal Court held that gave rise to a serious doubt on the identity of the drug exhibit and allowed the appeal by the accused. Zulkefli Makinudin FCJ, in delivering judgment of the court had this to say:

> We agree with the contention of the appellant that there is a serious doubt as to the weight of the cannabis, thus affecting the identity of the cannabis. According to the chemist (PW3) the total weight of the cannabis is 224.65 grams. The weight of 224.65 grams is obtained by adding the weight of the cannabis placed on the newspaper which is 151.08 grams and the cannabis from the 40 plastic packets which is 73.57 grams. However, exh. P15 (Borang Serah Menyerah) stated that the weight of the cannabis to be 140 grams (on the newspaper) and 65 grams (in the 40 packets) making the total gross weight to be 205 grams. This would mean that by the time the cannabis reached the hands of the chemist the cannabis has increased in weight by 19.65 grams.

[37] Our attention was drawn to the case of *Loh Kah Loon v. PP* [2011] 5 CLJ 345 where the Federal Court held that even though there existed a discrepancy in the weight of the drug exhibit as found by the police and the chemist, the High Court found as a fact that there was no doubt in the identity of the exhibit because the evidence before the court showed that there was no break in the chain of evidence. Having considered these three previous decisions, we agree with the reasoning in *Yeong Kia Heng lwn. PP (supra)* and *Tan Yew Choy v. PP (supra)*. In our view, it is a contradiction in terms, to say that there is no break in the chain of evidence, when in fact there exists material discrepancy as to the weight of the drug exhibit. In any event, in the present case the discrepancies are not only as regard to the gross weight but also as to the number of "ketulan". In our view, these are material discrepancies that go to the issue of identity of the drug exhibit. In the circumstances, therefore, it cannot be said that there is no break in the chain of evidence. On that premise, we hold that it would not be safe to uphold the convictions.

Conclusion

[38] In the upshot, the appeals are allowed and the conviction and sentence imposed by the High Court, which were affirmed by the Court of Appeal, are set aside. The appellants are acquitted and discharged.

[16] Coming back to the present case, unlike the case of *Zaifull Muhammad*, it is true that there is only one material discrepancy as to the gross weight of the drugs exhibits. In our judgment, even though there existed only one material discrepancy in the present case as found by the police and the chemist, which was left unexplained, this created a reasonable doubt as to the identity of the drugs exhibits in question. Under such circumstances, as made clear by the learned Chief Justice, "it is a contradiction in terms, to say that there is no break in the chain of evidence, when in fact there exists material discrepancy as to the weight of the drug exhibit". This extract from the judgment of the learned Chief Justice is very significant principle of law to follow. It is also important to note that the Federal Court in *Zaifull Muhammad* referred to the case of *Loh Kah Loon v. PP* but prefers the reasoning in both *Yeong Kia Heng lwn. PP* [1992] 1 CLJ 364; [1992] 1 CLJ (Rep) 372 and *Tan Yew Choy v. PP* [2009] 4 CLJ 245. The *ratio decidendi* laid down in *Zaifull Muhammad* is that an accused person is entitled to any benefit of reasonable doubt from any material discrepancy, which goes to the identity of the drugs exhibits that is left unexplained. Indeed, the dangerous drugs itself (ketamine and nimetazepam in this instant case), constitutes the very *corpus delicti* of the offence and in sustaining a conviction under s. 39B(2) of the DDA, the identity and integrity of the *corpus delicti* must be established beyond reasonable doubt. It is pertinent to note that a unique characteristic of dangerous drugs is that they are not readily identifiable as in fact they are subject to scientific analysis by the chemist to determine their composition and nature. Therefore, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied. Where there is a material discrepancy in the weight of the drug exhibit as found by the police and the chemist, it is incumbent on the prosecution to explain such discrepancy satisfactorily. Affirmative evidence is required to dispel any lingering or remaining reasonable doubt on the identity of the drugs exhibits. The absence of a reasonable explanation would give rise to a reasonable doubt on the identity of the drugs exhibits. This point has already been made earlier but deserved to be reiterated. Undeniably, *Zaifull Muhammad* is the latest Federal Court decision on the issue of identity of drugs exhibits. It represents the law on this subject as we apply today. In this way, the learned DPP's arguments did not overcome the difficulty in the face of the case of *Zaifull Muhammad*.

[17] For all these reasons, we had therefore allowed this appeal. The appellant should have been discharged and acquitted by the learned judge without his defence being called on this ground alone. Accordingly, we quashed and set aside the conviction and sentence against the appellant. The appellant was acquitted and discharged.